

PT 96-28
Tax Type: PROPERTY TAX
Issue: Charitable Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

VICTORY GARDENS THEATER and)	
COMMUNITY ARTS FOUNDATION,)	94-16-1367
APPLICANTS)	
)	
v.)	Real Estate Exemptions
)	for 1994 Tax Year
)	
DEPARTMENT OF REVENUE)	P.I.N.: 14-33-110-003
STATE OF ILLINOIS)	
)	Alan I. Marcus,
)	Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

APPEARANCE:

Mr. Thomas McNulty of Keck, Mahin & Cate, appeared on behalf of the Victory Gardens Theater and Community Arts Foundation.

SYNOPSIS:

This matter comes on for hearing pursuant to the Victory Gardens Theater/Community Arts Foundation's (hereinafter referred to as the "applicant" or "VGT/CAF"), protest of the Illinois Department of Revenue's, (herein referred to as the "Department"), denial of VGT/CAF's application for exemption from real estate taxes for the 1994 assessment year pursuant to 35 ILCS 200/15-5 *et seq.*¹ At issue is whether the above-captioned parcel qualifies for exemption as a property used exclusively for school purposes within the meaning of 35 ILCS

¹In *People ex rel Bracher v. Salvation Army*, 305 Ill. 545 (1922), the Illinois Supreme Court held that the issue of property tax exemption will depend on the statutory provisions in force at the time for which the exemption is claimed. This applicant seeks exemption from 1994 real estate taxes. Therefore, the applicable statutory provisions are those contained in the Property Tax Code (35 ILCS 200\1-1 *et seq.*).

200/15-35 and/or whether the above-captioned parcel qualifies for exemption as a property used exclusively for charitable purposes within the meaning of 35 ILCS 200/15-65. Following submission of all evidence and a careful review of the record, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. The Department's jurisdiction over this matter and its position therein is established by the admission into evidence of Dept. Ex. Nos. 1 and 2.

2. The subject property is located at 2257-2263 North Lincoln Ave, Chicago, IL 60614. Its Permanent Index Number is 14-33-110-003. *Id.*

3. During the 1994 tax year, the subject property included a two-story, 20,000 square foot building. The Victory Gardens Theater (hereinafter "VGT") was located on the first floor and took up approximately 6,305 square feet. Applicant Ex. No. 8. The theater was used approximately seven days per week for rehearsals, performances, classes, workshops and various meetings. Tr. p. 21.

4. 3,104 square feet of the first floor had "always been used as a restaurant." Tr. p. 32.

5. Pursuant to a lease executed June 1, 1994, applicant leased the 3,104 square feet, (approximately 15% of the total space), to the 2263 N. Lincoln Corporation. Dept. Ex. No. 1; Applicant Ex. No. 4.

6. The lessee operated TraVia restaurant on the leased premises. Applicant Ex. Nos. 4, 8; Tr. p. 31. VGT used the rent proceeds, which amounted to approximately \$18,000.00, to offset programming costs and to pay theater artists. Tr. pp. 33-34.

7. VGT was incorporated under the General Not For Profit Corporation Act on August 12, 1974. Applicant Group Ex. No. 2. It had no capital stock or shareholders during the 1994 tax year and was exempt from Federal Income Tax under Section 501(C)(3) of the Internal Revenue Code. Tr. p. 24; Applicant Group Ex. No. 2.

8. On October 30, 1992, the Illinois Department of Revenue issued VGT Tax Exemption Identification Number E9983-3743-02. Applicant Group Ex. No. 2.

9. VGT's Articles of Incorporation and By-Laws, in effect during the 1994 tax year, provided that its purposes were as follows:

A. To be organized and operated exclusively for charitable, literary and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1954.

B. To stimulate, promote and develop interest in the dramatic arts and the study of drama.

C. To support the development of talent, theater and drama in Chicago and improve the quality of the dramatic arts in America.

D. To increase knowledge and appreciation of the dramatic arts and to advance the national culture in the field of the dramatic arts.

E. To provide support facilities for research, education, and instruction in the dramatic arts of the theater.

F. To develop the forgoing through, among other means, the production of drama and workshops, schools, and training centers for actors, directors and playwrights.

Applicant Group Ex. No. 2.

10. VGT's by-laws prohibited its directors from receiving salaries for their services. *Id.* However, the by-laws did allow directors to receive salaries for serving the corporation in other capacities. *Id.*

11. VGT's by-laws empowered the Board of Directors to pass resolutions allowing for payment of director's expenses, provided that such expenses related to attending VGT's annual meeting or any other regular meeting of the Board of Directors. *Id.*

12. VGT's by-laws provided for the following officers: chairman, executive [sic], two vice-presidents, treasurer, secretary, managing director and artistic director. The by-laws were silent as to compensation for the chairman, vice-president, treasurer and secretary. However, the managing and artistic directors could be employed on terms, conditions and compensation fixed by the Board of Directors. *Id.*

13. VGT's by-laws provided that it use "the fiscal year ending June 30 of each year as its fiscal year." *Id.*

14. VGT obtained \$572,886.00 in revenues and support from operations during the fiscal year that began July 1, 1993 and ended June 30, 1994. Said revenues were obtained from the following sources:

A. \$407,638.00, or approximately 71%, from admissions. These revenues were earned by selling tickets for plays.

B. \$17,074.00, or approximately 3%, from service fee income.

C. \$63,394.00, or approximately 11%, from tuition.

D. \$258.00, or less than one percent, from interest.

E. \$4,320.00, or approximately 7.5%, from concessions, net of direct expenses.

F. \$21,330.00, or approximately 3.7%, from tours.

G. \$37,084.00, or approximately 6.5%, from unspecified rental income.

H. \$21,788.00, or approximately 3.8%, from royalties.

Applicant Ex. No. 3; Tr. p. 30.

15. VGT received \$421,417.00 in unidentified grants and contributions during the fiscal year that ended June 30, 1994. It also received net income of \$88,145.00 from unidentified "special events." *Id.*

16. VGT incurred \$1,166,770.00 in functional expenses during the fiscal year that began July 1, 1993 and ended June 30, 1994. Said expenses were apportioned as follows:

A. \$733,760.00, or approximately 63% on salaries, payroll, taxes and employee benefits.

B. \$121,402.00 or approximately 10% on publicity and subscription.

C. \$52,092.00, or approximately 4%, on occupancy.

D. \$31,850.00, or approximately 2.7%, on travel/rent.

E. \$12,279.00, or approximately 1%, on telephone.

F. \$47,858.00, or approximately .4%, on production expenses.

G. \$29,338.00. or approximatley 2.5%, on royalty expenses.

H. \$29,516.00, or approximately 2.5% on professional fees.

I. \$21,044, or approximately 1.8%, on supplies.

J. \$12,121.00, or approximately 1%, on insurance.

K. \$20,122.00, or approximately 1.7%, on interest and bank charges.

L. \$24,574.00, or approximately 2.1%, on unspecified "other" expenses.

M. \$30,841.00, or approximately 2.6%, on depreciation and amortization.

Applicant Ex. No. 3.

17. Applicant did not submit any evidence establishing VGT's income and expenses after June 30, 1994.

18. VGT provided Lincoln Park High School, (hereinafter "LPHS"), with complimentary tickets during the 1994 tax year. These tickets enabled Lincoln Park student to see VGT's presentations free of charge. Tr. pp. 9, 11.

19. VGT also participated in the Chicago Arts Partnership in Education, (hereinafter "CAPE"), during the 1994 tax year. Through this program, VGT and other Chicago-area theaters provided personnel that went into classrooms and worked with teachers "to integrate the arts into the general curriculum." Tr. p. 9.

20. VGT provided personnel for the CAPE program, which included sending people to teach classes at LPHS, free of charge. Tr. p. 11.

21. LPHS obtained a \$60,000.00 CAPE grant during the 1994 tax year. The money from this grant went directly to LPHS, which used it to instigate the partnership with VGT. Tr. pp. 13-14.²

²The witness who testified as to this grant, Ms. Robin Robins, at first testified that she had "no idea" as to how VGT used any funds that it obtained from this grant. Tr. p. 13. However, Ms. Robins, who was an employee of the Chicago Board of Education, Lincoln Park High School, subsequently indicated that VGT used the money to pay the actual actors or playwrights that would come into the classroom. *Id.*

22. VGT conducted the following programs and activities during the 1994 tax year: A performance tour;³ Community Arts Residencies, which involved placing artists into different community organizations in order to facilitate the organizations and develop artistic product with them; distribution of over 200 free subscriptions to the theater to inner-city high school students; a Night of Scenes, in which VGT took scenes from various plays out into the community and offered them free of charge; and, day time performances in which VGT offered free or highly discounted tickets to students and other groups. Tr. pp. 21-22, 26.

23. VGT had a scholarship subscription program in effect during the 1994 assessment year. Under this program, VGT provided over 200 season tickets, which were good for five plays, to inner-city high school students. Participating schools included Austin Community Academy, George Collins, Evanston Township, Gauge Park, Josephine Ann High School, Our Lady of Tepeyac, Manly High School, Morton West, Near North Metropolitan, Simpson Alternative and Lake View High School. Tr. pp. 25-26.

24. VGT's performance tour, in which its artists performed shows free of charge in school gymnasiums or other available facilities, included the following schools: King High School, Harlem Community, Collins, Dunbar Vocational, Montefiore, Ingelwood Tech, Spaulding High School, Lake View High School, and Chicago Vocational High School. Tr. p. 26.

25. VGT's ticket subsidies ranged from free, (100% discount), to half price, (50% discount), tickets. It made these discounts available to numerous community, youth and senior organizations including the Oak Lawn Park District, Inspiration Cafe, Boys and Girls Club, Good News Soup Kitchen, City of Chicago Department of Aging, Dawn Sherman Institute, Sherwin Manor, Duncan YMCA, Martin

³See Finding of Fact (hereinafter "F/F") 24.

Luther King High School, Northwestern University, Malcolm X College and the Illinois Environmental Council. Tr. pp. 26-27.

26. VGT provided Stay in Touch, a community based organization that assists men and women whose lives have been afflicted by chemical abuse or alcoholism, with free tickets during the 1994 assessment year. Tr. pp. 41-42, 44.

27. VGT operated a school at its theater. One of the school's programs involved a special workshop that developed plays for disabled artists. VGT did not charge tuition to any disabled artist who participated in this workshop. Tr. p. 27.

28. VGT offered a program for visually impaired theater goers, called Audio Description, during the 1994 assessment year. This program allowed the visually impaired to go up to the stage, prior to the performance, and feel the set. It also provided visually impaired patrons with an audio describer who described the action of the play in between the spoken dialog. Tr. pp. 27-28.

29. VGT undertook an Access Project, which strove to make the theater more accessible to disabled people, in June of 1995. Tr. pp. 36, 38.

30. During the 1994 tax year, the subject property's upper level consisted of 9,409 square feet and served as the location of the Body Politic Theater (hereinafter "BPT"). Dept. Ex. No. 1; Applicant Ex. No. 8. BPT was originally envisioned as a community arts center. Tr. p. 48. However, Applicant did not provide any competent testimony as to its purpose, activities or financial condition during the 1994 assessment year.⁴

31. The Community Arts Foundation, d/b/a the Body Politic Theater (hereinafter "BPT/CAF") had been issued a certificate of dissolution or

⁴The primary witness with respect to the Body Politic's operations, Sharon Phillips, was not employed by or personally involved with the Community Arts Foundation (hereinafter "CAF") or BPT during the 1994 tax year. Tr. p. 51. Furthermore, the testimony of Mr. John Walker (Tr. pp. 55-56) was, except for some testimony regarding CAF's receipt of an Illinois Art's Council Grant (Tr. p. 55), based on "discussions with [CAF's] board of directors," not his own personal knowledge. More importantly, Mr. Walker admitted that he could not attest to the accuracy of CAF's income and expense statements for 1994 because they were "prepared by someone who doesn't really know how to prepare financial statements". Tr. p. 57.

revocation by the Secretary of State of the State of Illinois on August 1, 1987. However, it was reinstated under the General Not For Profit Corporation Act on September 3, 1987. Applicant Ex. No. 5.

32. CAF/BPT obtained an exemption from Federal Income Tax, under Section 501(c)(3) of the Internal Revenue Code, on December 17, 1967. Applicant Ex. No. 6.

33. On August 7, 1992, the Illinois Department of Revenue issued the CAF/BPT Tax Exemption Number E9977-5786-02. Applicant Ex. No. 6.

34. Applicant did not submit Articles of Incorporation or by-laws which would establish CAF/BPT's purpose subsequent to reinstatement. It also did not present any evidence which would establish CAF/BPT's capital structure or financial condition during the 1994 assessment year.

35. CAF assumed legal title to the subject property via a trustee's deed dated December 20, 1968. Applicant Group Ex. No. 1.

36. On August 21, 1981, CAF entered into Trust No. 10-2864 with Aetna Bank. Under the terms of this agreement, CAF obtained a beneficial interest in the subject property. However, legal title remained with the trustee, Aetna. *Id.*

37. CAF assigned 53% of its beneficial interest in the land trust to VGT on April 17, 1984. *Id.* Following the assignment, CAF used only the upstairs space and concentrated exclusively on professional theater. Tr. p. 49.

38. CAF assigned the remaining 47% of its beneficial interest in the land trust to VGT on August 3, 1995. This absolute assignment of beneficial interest was part of a transaction in which VGT purchased CAF's portion of the subject property. Applicant Group Ex. No. 1; Tr. p. 20.

CONCLUSIONS OF LAW:

On examination of the record established this applicant has not demonstrated by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant an exemption from property taxes for the 1994

assessment year. Accordingly, under the reasoning given below, the determination by the Department that the above-captioned parcel does not qualify for exemption under 35 **ILCS** 200/15-35 and 35 **ILCS** 200-65 should be affirmed. In support thereof, I make the following conclusions:

A. Constitutional and Statutory Considerations

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The power of the General Assembly granted by the Illinois Constitution operates as a limit on the power of the General Assembly to exempt property from taxation. The General Assembly may not broaden or enlarge the tax exemptions permitted by the Constitution or grant exemptions other than those authorized by the Constitution. Board of Certified Safety Professionals, Inc. v. Johnson, 112 Ill.2d 542 (1986). Furthermore, Article IX, Section 6 is not a self-executing provision. Rather, it merely grants authority to the General Assembly to confer tax exemptions within the limitations imposed by the Constitution. Locust Grove Cemetery Association of Philo v. Rose, 16 Ill.2d 132 (1959). Moreover, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App.3d 497 (1st Dist. 1983).

In furtherance of its Constitutional mandate, the General Assembly enacted the Property Tax Code, 35 **ILCS** 200/1-3 **et seq.** The provisions of that statute which govern disposition of the present matter are contained in Sections 200/15-35 and 200/15-65. In relevant part, the former provides as follows:

... All property donated by the United States for school purposes, and all property of schools, not sold or leased or otherwise used with a view to profit, is exempt, whether owned by a resident or non-resident of this State

or by a corporation incorporated in any State of the United States. Also exempt is:

(b) property of schools on which the schools are located and any other property of schools used by the schools exclusively for school purposes, including, but not limited to, student residence halls, dormitories and other housing facilities, and school owned and operated dormitory or residence halls occupied in whole or in part by students who belong to fraternities, sororities or other campus organizations.

Section 200/15-65 provides, in relevant part, that:

... All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

(a) institutions of public charity;

(b) beneficent and charitable organizations incorporated in any state of the United States whose owner, and no other person, uses the property exclusively for the distribution, sale or resale of donated goods and related activities and uses all the income from those activities to support the charitable, religious or beneficent activities of the owner, whether or not such activities occur on the property.

B. The Burden of Proof

It is well established in Illinois that a statute exempting property or an entity from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. People Ex Rel. Nordland v. Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Based on these rules of construction, Illinois courts have placed the burden of proof on the party seeking exemption, and, have required such party to prove, by clear and convincing evidence, that it falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App.3d 678 (4th Dist. 1994).

C. The State of Title and Its Implications for the Burden of Proof

In People v. Chicago Title and Trust, 75 Ill.2d 479 (1979), (hereinafter "CT&T"), the Illinois Supreme Court held that the land trust beneficiary, and not the trustee, was the "owner of the property" for purposes of determining liability for real estate taxes. The CT&T court was interpreting Section 508(a) of the Revenue Act of 1939, (Ill. Rev. Stat. 1977, ch. 120, par. 508(a) which provided that "... [t]he owner of real property on January 1 ... in any year shall be liable for taxes of that year.⁵ "

The instant record⁶ establishes that VGT owned a 53% beneficial interest in the subject property as of January 1, 1994. Said record further establishes that CAF/BPT owned the remaining 47% as of the same date. Because CAF/BPT did not relinquish this interest until August 3, 1995,⁷ it was, under the CT&T, *supra*, holding, a partial owner of the subject property throughout the entire 1994 assessment year.

In Chicago Patrolmen's Association et al v. Department of Revenue, 171 Ill.2d 263 (1996), (hereinafter "CPA"), the Illinois Supreme Court held that the owner of a 50% beneficial interest in a land trust was entitled to "an exemption in an amount equal to the actual percentage of the property" that it owned. The CPA court based its conclusion, in part, on Departmental concessions which established that the 50% beneficial interest holder, a museum, was a charitable organization and used the parcels in question for charitable purposes. While the aforementioned rules governing the applicants' burden of proof prohibit me from making such concessions in the instant case, the CPA holding suggests that, assuming they sustain their respective burdens of proof, VGT and CAF/BPT can obtain exemptions that are proportionate to their respective ownership interests

⁵The relevant version of that provision, which for purposes of the present discussion is identical to Section 501(a), is found in 35 **ILCS** 200/9-175.

⁶See the assignment documents submitted as part of Applicant's Group Ex. No. 1.

⁷See F/F 38.

in the subject property. Therefore, I must refocus my analysis toward a discussion of the case law pertaining to charitable and educational exemptions.

D. The Charitable Exemption

In CPA, *supra*, the court reaffirmed the guidelines, found in Methodist Old People's Home v. Korzen, 39 Ill.2d 149 (1968), for determining whether a given applicant is a "charitable organization" within the meaning of the real estate exemption provisions. In Korzen, the Illinois Supreme Court adopted the following definition of "charity" in analyzing whether appellant's senior citizen's home was exempt from property taxes under the Revenue Act of 1939:

... a charity is a gift to be applied consistently with existing laws, for the benefit of an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare - or in some way reducing the burdens of government.

39 Ill.2d at 157 citing Crerar v. Williams, 145 Ill. 625 (1893).

The Korzen court also observed that the following "distinctive characteristics" are common to all charitable institutions: 1) they have no capital stock or shareholders; 2) they earn no profits or dividends, but rather, derive their funds mainly from public and private charity and hold such funds in trust for the objects and purposes expressed in their charters; 3) they dispense charity to all who need and apply for it; 4) they do not provide gain or profit in a private sense to any person connected with it; and, 5) they do not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses. *Id.*

Based on Findings of Fact 30 and 34, I conclude that CAF/BPT has failed to sustain its burden of proof with respect to the charitable exemption. As noted in footnote 3, *supra*, Ms. Phillips was not personally involved with CAF or BPT during the 1994 assessment year. Thus, while her testimony was legally competent to establish that the Body Politic was *originally* envisioned as a community arts center, this same testimony is not legally competent to establish

that BPT retained that vision or purpose during the 1994 assessment year. This is especially true in light of Ms. Phillips' admission that CAF concentrated on professional theater after it assigned 53% of its interest in the subject property to VGT. Tr. p. 49.

Applicant has also failed to sustain its burden of proof because it did not submit any documentary evidence which would establish that CAF/BPT maintained its original purpose or functions after it was reinstated by the Illinois Secretary of State on September 3, 1987. The certificate of reinstatement, submitted as Applicant Ex. No. 5, fails to make mention of any charitable or educational purpose. Illinois courts have, on more than one occasion, indicated that lack of such wording in organizational documents can provide evidence that the applicant is not in fact organized for exempt purposes. People ex. rel. Nordlund v. Association of the Winnebago Home for the Aged, 40 Ill.2d 91 (1968); Albion Ruritan Club v. Department of Revenue, 209 Ill. App.3d 914 (5th Dist. 1991).

Similarly, applicant did not submit any Articles of Incorporation or bylaws that pertained to CAF/BPT. Without such evidence, and in light of the aforementioned evidentiary shortcomings of Ms. Phillips' testimony and the certificate of reinstatement, I conclude that applicant has failed to establish CAF/BPT's purpose and organizational structure during the 1994 assessment year. In addition, because applicant did not submit CAF/BPT's financial statements, and Mr. Walker testified that he could not vouch for the accuracy of the financial statements he saw (Tr. p. 57), I further conclude that applicant failed to clearly and convincingly establish CAF/BPT's financial structure during the 1994 tax year.

The letters submitted as Applicant Ex. No. 6 do not alter the preceding conclusion. The first, issued by the IRS December 19, 1967, only establishes that CAF/BPT was exempt from Federal Income Tax under Section 501 (c)(3) of the Internal Revenue Code *before* its dissolution or revocation became effective

August 1, 1987. Because applicant did not submit any evidence which would establish that CAF/BPT renewed the exemption *after* its reinstatement, it failed to prove that the exemption was in effect during the 1994 tax year.

Even assuming, *arguendo*, that the exemption was still in effect, the 501(c)(3) letter only establishes CAF's right to exemption from Federal Income Tax. It does *not* state that CAF/BPT is a "charitable institution" or "school" within the meaning of 35 **ILCS** 200/15-35 and 200/15-65. Thus, this document, standing alone, cannot sustain applicant's burden of proof.

A similar analysis applies to the letter issued by the Illinois Department of Revenue. This letter was issued after the date of CAF/BPT's reinstatement. However, it does not, on its face, state that CAF/BPT is a "charitable institution" or "school" within the meaning of the Retailer's Occupation Tax Act (35 **ILCS** 120/1 *et seq.*) or Property Tax Code. Rather, it plainly states that BPT (and only BPT) "is a non-profit 501(C)(3) organization for the presentation of musical or theatrical works." Because both CPA, *supra*, and Korzen, *supra*, require that the applicant establish more than non-profit status in order to claim exemption from real estate taxes, I conclude that the sales tax exemption letter, standing alone, is insufficient to sustain the applicant's burden of proof.

Due to the aforementioned failures of proof, I conclude that CAF/VGT is not entitled to a 47% exemption from 1994 real estate taxes under in Section 200/15-65 and the holding set forth in CPA, *supra*. Therefore, I must refocus my analysis on VGT and determine whether that entity has sustained its burden of proof.

I find that VGT had no capital stock or shareholders during the 1994 assessment year.⁸ I further find that because VGT's functional expenses exceeded its total revenues for the fiscal year beginning July 1, 1993 and

⁸. See F/F 7.

ending June 30, 1994⁹, it earned no profits or dividends during that time. However, VGT did not submit any evidence establishing what income it received and what expenses it incurred between July 1 and December 31, 1994. Absent such evidence, VGT has failed to establish that it did not earn any profits during the second half of the 1994 assessment year.

Mr. Walker's testimony¹⁰ does not alter the above conclusion. This testimony was based on the audit introduced as Applicant Ex. No. 3. As noted above, that audit failed to establish VGT's income and expenses for the second half of the 1994 assessment year. Thus, any testimony concerning that audit can only establish the state of VGT's financial affairs of June 30, 1994. Because VGT cannot sustain its burden of proof without establishing its financial condition for the *entire* 1994 assessment year, which ended December 31, 1994, I conclude that Mr. Walker's testimony does not cure the aforementioned failure of proof.

The criteria set forth in Korzen, *supra*, also require that the applicant "derive [its] funds mainly from public and private charity." During the fiscal year ending June 30, 1994, VGT's earned a total annual income of \$1,082,448.00.¹¹ Said total was attributable to the following sources: \$572,886 from revenues and support from operations; \$421,417.00 in unidentified grants; and \$88,145.00 from unspecified special events.¹² Because the grants were unidentified, VGT failed to prove that they came from public or private charity. More importantly, insofar as these grants constituted only 38.93% of VGT's total revenues during

⁹. See F/Fs 14, 15 and 16; Applicant Ex. No. 3.

¹⁰. See Tr. pp. 29-30.

¹¹. See F/F 14, 15.

¹². See F/F 14, 15.

the fiscal year ending June 30, 1994,¹³ I conclude they were not the primary source of VGT's funding during that time.

Mr. Walker testified that VGT obtained 50% of its total income from individuals, corporations and foundations, as well as state and federal agencies. This testimony is not supported by the preceding analysis, which establishes that VGT obtained only 38.9% of its total revenues from such sources.

Mr. Walker further testified that VGT obtained 50% of its income from ticket sales. Such testimony is not supported by the audit, which established that VGT earned 71% of its revenues and support from operations from ticket sales. The audit further established that VGT earned another 3% of its revenues and support from operations for ticket service fee income and 11% from tuition.

VGT derived the aforementioned funds from private, arms' length business transactions. Furthermore, as noted above, VGT failed to sustain its burden of proof as to the 50% of its income which allegedly came from charitable sources. For these reasons, and because the revenues earned from ticket sales, service fees and tuition accounted for over 80% of VGT's revenues and support operations for the fiscal year ending June 30, 1994, I conclude that VGT obtained most of its funding from business operations, not public and private charity.

The preceding considerations, taken together, establish that VGT has failed to prove that it is a "charitable institution" within the meaning of Korzen, *supra*, and 35 **ILCS** 200/15-65. I would also note that, except for the portion pertaining to CAF's reinstatement, the discussion concerning CAF's 501(c)(3) and sales tax exemption letters, found on pp. 14-15, *supra*, applies with equal force to the 501(c)(3) and sales tax exemption letters submitted by VGT as part of Applicant Group Ex. No. 2. Furthermore, the evidence pertaining to VGT's access program (See Finding of Fact 29) cannot alter the preceding conclusion because that program was not in effect during the 1994 tax year.

¹³The figure of 38.93% was derived by dividing income attributable to unspecified grants, \$421,417.00 by VGT's total income for the fiscal year ending June 30, 1994, \$1,082,448.00.

The corporate purposes set forth in VGT's charter and bylaws are charitable. Additionally, VGT, in fact, engaged in beneficent activity during the 1994 tax year. However, such purposes and activities cannot provide a legally sufficient basis for exemption under Section 200/15-65 absent conformity with the other criteria set forth in Korzen, *supra*.

I would note that the plain language of Section 200/15-65 bars exemption where the subject property is "leased or otherwise used with a view to profit." This Section, coupled with the CPA, *supra* holding implies that VGT would not be entitled to exemption of the 15% of total space which it leased to the 2263 N. Lincoln Corporation. Although Mr. Walker's testimony established that VGT applied the rent proceeds toward paying artists and offsetting programming costs *after* the lease with the 2263 N. Lincoln Corporation went into effect on June 1, 1994, (Tr. pp. 33-34), it failed to establish that VGT made similar use of any rent proceeds it obtained before that time.

Mr. Walker testified that the 3,104 square feet had "always" been used as a restaurant. Based on this testimony, I conclude that this area had been leased for restaurant purposes between January 1 and May 31, 1994. Insofar as the instant record contains absolutely no evidence that would establish how the lessor applied any rent proceeds it received between these dates, I conclude that VGT has failed to prove that the leased premises were not leased "with a view to profit" before June 1, 1994. Based on this failure of proof, as well as the preceding analysis, I conclude that VGT is not entitled to exemption under Section 15-65. Therefore, I must consider whether VGT or CAF/BPT can obtain exemption under Section 200/15-35.

E. The Educational Exemption

Illinois courts have held that a private school, such as applicant, cannot obtain an exemption from real estate taxes unless it establishes two propositions by clear and convincing evidence: first, that it offers a course of

study which fits into the general scheme of education established by the State; and second, that it substantially lessens the tax burdens by providing educational training that would otherwise have to be furnished by the State. Illinois College of Optometry v. Lorenz, 21 Ill. 219 (1961), (hereinafter "ICO").¹⁴

In ICO, the court began analyzing whether applicant's optometry school satisfied the above criteria by noting that "The Illinois Optometric Practice Act¹⁵ has expressly declared that the practice of optometry in this State affects the public health, safety and welfare ...[.] ICO, *supra* at 219. The court further observed that the General Assembly intended "to elevate the practice of optometry to that of a profession or skilled occupation similar to the practice of medicine, surgery or dentistry." *Id.*

Neither CAF/BPT nor VGT cited any authority establishing, and my research has failed to disclose, any legislative declaration pertaining to the theater arts which is akin to the one found in ICO regarding the practice of optometry. Absent such a declaration, and without authority establishing that the General Assembly intended to elevate the theater arts "to a profession or skilled occupation," I must conclude that ICO, in which the court allowed exemption, is factually distinguishable from the instant case.

It is also significant that the applicant in ICO offered evidence which established that the courses it offered were "equally as comprehensive and exacting" as those taught in public universities. ICO, *supra* at 223. Both CAF/BPT and VGT submitted little, if any evidence concerning their respective curricula. Thus, I must conclude that both CAF/BPT and VGT have failed to sustain their respective burdens of proof with respect to the test articulated

¹⁴See also, Coyne Electrical School v. Paschen, 12 Ill.2d 387 (1957); Board of Certified Safety Professionals of the Americas v. Johnson, 112 Ill. 2d 542 (1986); American College of Chest Physicians v. Department of Revenue, 202 Ill. App. 3d 59 (1st Dist. 1990); Yale Club of Chicago v. Department of Revenue, 214 Ill. App. 3d 468 (1st Dist, 1991).

¹⁵At the time ICO was decided, those provisions appeared at Ill. Rev. Stat.1959, chap. 91. par. 105.2 *et. seq.* The current version is found in 225 **ILCS** 80/1 *et seq.*

in ICO. Therefore, neither CAF/BPT nor VGT are entitled to exemption under Section 15-35.

WHEREFORE, for the reasons stated above, it is my recommendation that the Department's denial of exemption be affirmed and that the above-captioned parcel remain on the tax rolls for the 1994 assessment year.

Alan I. Marcus
Administrative Law Judge

Date